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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

April 15, 1996

Mr. William F. Canton  
Acting Secretary  
Office of the Secretary  
Federal Communications Commission  
Room 222, 1919 M Street, N.W.  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: In the Matter of: Preemption of Local Zoning Regulations of Satellite Earth  
Stations, IB Docket Number 95-59, DA 91-577, 45-DDS-MISC-93, FCC 96-78,  
Further Notice of Proposed Rulemaking

Dear Mr. Canton:

Pursuant to the Further Notice of Proposed Rulemaking, the Community Associations Institute, joined by the American Resort Development Association and the National Association of Housing Cooperatives, respectfully submits the enclosed Comments to Proposed Section 25.104(f). The original and nine (9) copies have been provided.

The Community Associations Institute, the American Resort Development Association, and the National Association of Housing Cooperatives appreciate the opportunity to comment on the Proposed Rule and hope that the FCC takes these Comments into account when drafting the final rule.

Sincerely,

Robert M. Diamond  
President  
Community Associations Institute

Enclosures

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Before the  
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In the Matter of	)	IB Docket No. 95-59
	)	DA 91-577 .
Preemption of Local Zoning Regulations	)	45-DSS-MISC-93
	)	FCC 96-78

COMMENTS OF THE COMMUNITY ASSOCIATIONS INSTITUTE

JOINED BY

THE AMERICAN RESORT DEVELOPMENT ASSOCIATION

and

THE NATIONAL ASSOCIATION OF HOUSING COOPERATIVES

Robert M. Diamond  
President  
Barbara Byrd-Lawler, CAE  
Executive Vice President  
Community Associations Institute

April 15, 1996

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**Members**

## SUMMARY

The Community Associations Institute ("CAI"), the American Resort Development Associations ("ARDA"), and the National Association of Housing Cooperatives ("NAHC"), support the broad public policy that promotes equal access to telecommunications services throughout the United States. However, the Proposed Section 25.104(f), drafted to implement this broad public policy in respect to DBS satellite antennas less than one meter in diameter, unless clarified, will pose great problems for community associations and their residents.

Community associations will face great difficulties in implementing this rule due to the nature of the legal basis for the associations' existence and the different types of property in community associations. The Proposed Rule overlooks these differences. In the vast majority of condominiums and cooperatives, all of the structures upon which a unit owner or resident would be installing telecommunications reception equipment would be on areas commonly owned by all unit owners or by the association. No person may be constitutionally granted the right to use the property of another person without their consent. Thus, neither the Telecommunications Act nor the Proposed Rule could intend to allow an owner or resident to install a satellite dish on common property, which such person does not own. Neither the Act nor the Proposed Rule could intend such a fundamental change in property relationships.

Planned communities will have a lesser problem with installations on common property, since there usually is individual property upon which to install telecommunications equipment. However, planned communities would like to ensure that if an individual owner

is able to place equipment in an area that does not violate the architectural restrictions without losing access to satellite services, then the association should be able to require the unit owner to comply with the architectural restriction. The intent of the Proposed Rule is then carried out, as the owner has access to telecommunications services, while the association retains the ability to enforce its controls.

CAI, ARDA, and NAHC also have the following suggested addition to the Proposed Rule, that would allow associations to make satellite service available to all of their residents, by whatever means possible. If an association does so, by making access to all given satellite service providers in the association's area available, and all members may select his own satellite service provider, then the associations should then be permitted to enforce its restrictions against any individual unit owner or resident who violates these architectural and other restrictions. The purpose of the Rule would be achieved, since the community association would ensure access to all residents, while still retaining the right to preserve the safety, property values, and nature of the community association.

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of Satellite Earth Stations	)	45-DSS-MISC-93
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I. INTRODUCTION

Pursuant to the Further Notice of Proposed Rulemaking released March 11, 1996, in the above-captioned proceeding, the Community Associations Institute ("CAI", joined by the American Resort Development Association ("ARDA") and the National Association of Housing Cooperatives ("NAHC"), submits the following Comments in response to the proposed Section 25.104(f) to Chapter 47 of the Code of Federal Regulations. CAI, ARDA, and NAHC understand and support the broad public policy aimed at eliminating impediments to equal access to satellite services. The industries served by these three organizations have serious concerns, however, about how community associations may implement the proposed rule, however. Those concerns are summarized below.

These Comments are divided into the following sections: an introduction to the three organizations filing the Comments; the legal framework of community associations, a discussion of a proposed interpretation of Proposed Section 25.104(f), and a discussion of the impact of this Proposed Rule on community associations comprised mostly of common property and community associations comprised mostly of individual property.

#### A. The Community Associations Institute

The Community Associations Institute is a national, nonprofit 501(c)(6) association created to educate and represent America's residential community association industry. CAI is a multi-disciplinary alliance leading the industry and fostering effective community associations. CAI's members include condominium and homeowner associations, cooperatives, and association-governed planned communities of all sizes and architectural types; community association managers and management firms; individual homeowners; lawyers, accountants, engineers, builders/developers and other providers of professional services and products for community associations. CAI has nearly 15,000 members in 57 chapters throughout the United States and in several foreign countries.

CAI is the national voice of community associations and their members on issues of common concern. Since its inception in 1973, CAI has consistently represented those interests before state and federal legislatures and courts and has been the leader in accumulating and disseminating the body of knowledge which affects community association management, law and operations. One of CAI's goals is to improve the operation and quality of life of community associations for the benefit of those who reside in them.

According to estimates, approximately 32 million Americans live in dwellings governed by a community association. Other estimates show that in 1993 there were approximately 12 million homes located within over 150,000 community associations across the country. Clifford J. Treese, CPCU, ARM, ed. Community Association FactBook, inside



cover (1993). Development of, and homeownership in, community associations continues to escalate.

#### **B. The American Resort Development Association**

The American Resort Development Association is the only international trade organization exclusively representing the resort and recreational development industry. Established in 1969, ARDA's members include privately-held companies and major corporations in the United States and overseas. ARDA is considered to be the definitive resource for information about the resort industry.

ARDA's diverse membership includes companies with interests in timeshare resorts, vacation clubs, fractional or interval ownership, private membership camp resorts, land development, lot sales, second homes, hotels, and resort communities.

ARDA is actively committed to consumer affairs and has initiated a comprehensive consumer awareness public relations campaign. In addition, ARDA has launched a rigorous professional development program, the ARDA Education Institute, to promote the highest possible standards in marketing, sales, and customer service. ARDA actively promotes compliance with an industry Code of Standards and Ethics.

#### **C. The National Association of Housing Cooperatives**

The National Association of Housing Cooperatives, organized in 1950, is a nonprofit

national federation of housing cooperatives, professionals, organizations, and individuals promoting the interests of cooperative housing communities.

## II. LEGAL FRAMEWORK FOR COMMUNITY ASSOCIATIONS

### A. What is a Community Association?

"Community association" is a broad term: many different types of legal entities are classified as community associations. Generally, a community association is an aggregation of property owners who: (a) own their individual residences or the right to live in individual residences; and (b) have either an interest in property owned in common or membership in a corporation or association which owns common property. The association manages this common property on behalf of the individual owners for the common good of the community. To maintain the common property, each owner pays assessments to the association. There are three major types of community associations: condominium, cooperative, and planned community. Each type of community association grants different legal rights to and imposes different legal responsibilities upon individual owners and residents. Treese, Community Association FactBook, 1.

State law controls the creation, operation, management, and dissolution of community associations. Cooperatives and planned communities may be created and managed pursuant to common law principles, but in many states there are state laws regulating these developments. Condominiums must be created pursuant to a statute enabling act. Treese,

Community Associations FactBook, 5. All fifty states and the District of Columbia have passed some type of statute regulating condominiums, usually called the Condominium Act or Horizontal Property Act. Many states have also passed similar legislation regarding planned communities and cooperatives.

There are three different types of property in community associations: common property (called "common elements" in condominiums and "common areas" in planned communities, limited common elements, and individually-owned property (called "units" in condominiums, "apartments" in cooperatives, and "lots" in planned communities). In condominiums, each unit owner has an undivided tenancy-in-common interest in the common elements. Unif. Condominium Act, Section 1-103(7) (1990).<sup>1</sup> In cooperatives and planned communities, the common property is owned by an association, usually incorporated. Unif. Common Interest Ownership Act Sections 1-103(4), (10).<sup>2</sup> Common property is described in

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<sup>1</sup> The Uniform Condominium Act (UCA) was drafted by the National Conference of Commissioners on Uniform State Laws. There are two versions of the UCA, one adopted in 1977 and one amended in 1980. The UCA 1977 version has been adopted by three states and the District of Columbia. The 1980 version has been adopted by nine states. Two other states have passed parts of the UCA. Citations are from the Official 1990 Text of Uniform Real Property Acts.

There are three major Uniform Laws and one Model Act relating to community associations drafted by the National Conference of Commissioners on Uniform State Laws. The Uniform Condominium Act is the oldest of the three, originally drafted in 1977 and revised in 1980. The Uniform Planned Community Act was drafted in 1980, and the Model Real Estate Cooperative Act was drafted at about the same time. The Uniform Common Interest Ownership Act was drafted in 1982 to consolidate the three previous Acts into one comprehensive statutory scheme. All four Acts have sections which contain similar language. When the language between the four Acts is similar, citations are to the Uniform Condominium Act, the oldest and more widely adopted of the three Acts.

2. The Uniform Common Interest Ownership Act (UCIOA) has been adopted in seven states. Legislation adopting the UCIOA is pending in at least four other states.

the declaration. Unfinished parts of walls, floors, and ceilings described in the declaration as boundaries of a unit (e.g., the material underneath floorboards, plaster, paint, wallpaper, wallboard) are common property. Unif. Condominium Act, Section 2-102(1). Any fixture (e.g., flue, duct, wire, bearing element, conduit) that is used by more than one unit is common property. Unif. Condominium Act, Section 2-102(2).

In addition, some community associations have "limited common property" owned either by all members of the association in common or the association itself, but where exclusive access to or use of the limited common property is limited to only a few individual unit owners. Unif. Condominium Act, Section 1-103(16). Limited common property may include fixtures such as wires, conduits, chutes, flues, or bearing walls used by only one unit or owner, or fixtures such as shutters, awning, exterior doors, porches, patios, or balconies located outside the boundary of the unit and designed for use only by that particular unit. Unif. Condominium Act, Sections 2-102(2), (4). Some community associations have a great deal of common property while others have no property held in common. These distinctions are crucial to understanding the effect of the FCC's Proposed Rule on each community association.

The association is established to manage the common property for the benefit of all owners. The association is comprised of all owners in the development; membership is mandatory. The owners elect a board of directors to govern the association. Treese, Community Association FactBook, 21. To manage the common property, the association has the ability to levy and collect assessments, which must be paid by all owners. Treese,

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Citations are from the Official 1990 Text of Uniform Real Property Acts.

Community Association FactBook, 1. The association also has the authority to adopt and amend bylaws and rules and regulations to carry out the association's management functions. Unif. Condominium Act Section 3-103(a). The legal documents which create the community association specify the property rights that the association and the owners have in regard to the three types of property described above.

**B. Purposes for Restrictions in the Governing Documents of a Community Association**

The FCC "tentatively concludes" that private restrictions are drafted for "aesthetic considerations." Report and Order: Further Notice of Proposed Rulemaking, Section 62. This conclusion is incorrect. The purposes for which covenants ("CC&Rs"), bylaws and rules and regulations are adopted are manifold. Restrictions included in CC&Rs control the nature, use and occupancy of property in a development and determine the character of the community. These restrictions ensure that the purposes for which the development was planned and constructed are not eroded over time. Rules and regulations are adopted by the association board to facilitate the management, operation, use, repair, modification, and improvement of common property. Unif. Condominium Act Section 3-102(a)(6), (7). Many of the rules adopted pertain to maintaining the structural integrity of the common property, therefore ensuring the safety of all owners. If the common area structural integrity is not protected, then damage to common and individual property and personal injury will occur. Failure to adopt rules and restrictions that will protect the property value or structural

integrity of the common property of the association may lead to the liability of the association to its members for failure to act with due diligence and of the directors for breach of their fiduciary obligation.

Restrictions on the use of common (and sometimes individual) property, contained in associations documents, often have several purposes: to maintain the value of both the common and individual property, to regulate the wear and tear on the common property, and to prevent damage to the common property, the dwelling units associated with it, and the people using it. The association must have control over the common property to perform maintenance and make improvements.

Architectural restrictions ensure that construction and land use will be consistent with the original development plan. Wayne S. Hyatt & Joanne P. Stubblefield, The Identity Crisis of Community Associations: In Search of the Appropriate Analogy, Real Property Probate and Trust Journal, 611 (1993). Growth and development of the community can then occur according to an organized, systematic plan. These restrictions also ensure that the property of individual owners will not decrease in value. Byron R. Hanke, Architectural Control Design Review, 2 (1994).

### III. ANALYSIS OF PROPOSED SECTION 25.104(f)

Section 207 of the Telecommunications Act of 1996 states that:

“Within 180 days after the date of enactment of this Act, the Commission shall, pursuant to section 303 of the Communications Act of 1934, promulgate regulations to prohibit restrictions that impair a viewer’s ability to receive video programming service through devices designed for over-the-air reception of

television broadcast signals, multichannel multipoint distribution service, or direct broadcast satellite services."

This section appears to further the purposes of the Telecommunications Act: to promote equal access to telecommunications services.

In response to Section 207, the FCC has drafted the proposed rule Section 25.104(f), which states that:

"No restrictive covenant, encumbrance, homeowners' association rule, or other nongovernmental restriction shall be enforceable to the extent that it impairs a viewer's ability to receive video programming services over a satellite antenna less than one meter in diameter."

This rule would seemingly preempt any contrary restrictions contained in any association document, no matter what purpose the restrictions served, in order to provide access to telecommunications services. CAI, ARDA, and NAHC recognize that this goal is important, and part of a broad public policy. CAI, ARDA, and NAHC interpret this Proposed Rule to mean that association restrictions on satellite antennas will not be entirely precluded.

Community associations will still be able to enforce restrictions on satellites one meter or more in diameter. In addition, CAI, ARDA, and NAHC read the phrase "to the extent that" to mean that if one part of a restriction is preempted by the Proposed Rule, the other sections of the restriction remain in effect.

In the Proposed Rule, the word "impair" is not defined. Since there is no clear definition in the regulation, its interpretation will be very difficult and contentious. CAI, ARDA, and NAHC suggest the following interpretation of the word "impair": a private restriction "impairs" access to satellite service if it: (1) precludes installation of DBS satellite devices and/or cabling through reasonable means or (2) materially increases the cost

of installation of such equipment.

#### IV. IMPLEMENTATION OF PROPOSED SECTION 25.104(f)

Even though CAI, ARDA, and NAHC understand and support the broad public policy rationale behind Section 207 and the Proposed Rule, Section 25.104(f), community associations will have different types of problems in implementing this rule. These differences are due to the different types of community associations and the different type of common property ownership in such community associations. Common property is not owned by an individual owner or resident. Since many community associations have a great deal of common property, individual owners may not be able to install a satellite antenna unless the community association makes common property available for that purpose.

##### A. The Impact of Proposed Section 25.104(f) on Community Associations Mostly Comprised of Common Property

##### 1. Difference Between Common and Individual Property

The association and the individual owner or resident has different property rights and responsibilities in relation to the different types of property in a community association. The association is established to manage the common property. (In cooperatives and planned communities, the association itself owns the common property.) The association is the entity



legally responsible for the maintenance, repair, and replacement of the common elements.

Unif. Condominium Act, Section 3-107(a). If the association fails to maintain the common property, then it may be liable for any damages suffered as a result of such neglect.

Association board members may also be liable for failure to maintain the common property.

Hyatt & Stubblefield, 616.

In condominiums, mere possession of an undivided interest in the common property does not entitle a unit owner to unilateral control over common property. Generally, a unit owner may not change any of the common elements unless the owner obtains permission from the association. Unif. Condominium Act Section 2-111. The individual owner is so limited because he does not own an individual interest in the common property; he shares his ownership with all other unit owners and has ceded control of the common elements to the condominium association. The common area must be used to promote the common good of all unit owners, not merely the individual interests of one or a few unit owners.

In cooperatives and planned communities, the community association and not the owner or resident owns the common property. The individual owner has no legal right to make unilateral alterations to the common property, including the installation of satellite antennas.

## **2. Individual Owners or Residents May Not Install Satellite Equipment on Common Property Without Consent**

The Proposed Rule does not address the distinction between individually-owned

property and the various types of common property found in community associations. For the following reasons, CAI, ARDA and NAHC conclude that the Proposed Rule addresses the installation of satellite equipment on individually-owned property. It is a fundamental tenet of property law that one person may not enter onto another person's property without consent. Therefore, the Telecommunications Act of 1996 did not require the FCC to alter basic property law by precluding enforcement of restrictions on installation of individual satellite antennas on common property. To hold otherwise would exceed the statutory mandate of Congress and raise significant constitutional issues, particularly in regard to "takings" issues and impairment of contracts.

State courts have held that cable operators may not enter private property to install their equipment, because any statutorily-mandated entry would be an unconstitutional taking of private property. See, Waltham Telecommunications v. O'Brien, 532 N.E.2d 656 (1989). The same principle would apply to individuals seeking access to common property to install satellite equipment: the common property is not their property, and they have no legal right to install equipment on such property.

The Uniform Condominium Act requires the consent of the association for any individual owner to make changes to common property. Unif. Condominium Act Section 2-111. The governing documents for many community associations require the consent of all or a majority of the unit owners to an individual's use of common property for individual purposes. Carney v. Dolney, 261 Ill. App. 3d 1002, at 1010, 633 N.E. 2d 1015, 199 Ill. Dec. 219 (1994), *reh'g denied*. Therefore, Congress, in passing the Telecommunications Act, could not have intended to abrogate the property rights of the other owners in the common

property without compensation, in violation of the Constitution. (U.S. Constitution, Amendment V.)

**3. If the FCC Mandates Individual Owner or Resident Installation on Common Property, the Community Association will be Beset by Numerous Problems**

As stated above, CAI, ARDA, and NAHC interpret both the Telecommunications Act and the Proposed Rule to leave unchanged an individual owner's or resident's right to install a satellite antenna on common property. The Proposed Rule affects only the community association's ability to restrict installation on individually-owned property. However, if the FCC does not allow a community association to restrict the installation of such equipment on common property, then (in addition to the constitutional issues) the following practical problems have been suggested by CAI's members.

If the FCC were to void restrictions on installation of satellite antennas on common property, installation of such equipment by an individual owner or resident on common property has great potential to cause numerous structural problems. For example, satellite antennas providers or individual owners installing equipment on the roof would subject the roof to abnormal damage. Roofs are constructed of materials that are easily damaged. To attach the satellite antenna and cable to the individual owner's television, holes would have to be drilled, both to mount the antenna and to route the cable, either through the roof or through the exterior walls. Such holes are sealed by soft, synthetic material, which tends to degrade and shrink more quickly than concrete or roofing material. This degradation and

shrinkage would compromise the structural integrity of the building, weakening the roof and the exterior walls. Water damage is more probable as a result of such drilling. As the number of holes increases, the number of entries for insects such as termites increases. Considering the large number of installations that might be necessary on the roof of a high-rise building, the potential for damage escalates. See, Affidavit of James N. Reinhardt, architect, 1, 2.

Roofing contractors will not provide additional warranties for such satellite service, providers' movements and drilling operations. See, Letter of Jim Fox, Peterson Roofing. In fact, such movement and drilling will void roofing warranties for the entire structure. See, Limited Warranty of Premier Roofing; Letter of James M. Baron, 2. Improper installation may lead to more damage, as larger holes are drilled and not sealed. Letter of James M. Baron, 1. Therefore, associations will lose their roof warranties, and be responsible for paying the costs of roof repair caused by any improper installation of such equipment, and have no control over the means or method of installation nor the choice of the contractor performing the installation. A community association would then have to determine which owners' equipment caused the damage, and seek damages from these owners.

Maintenance of the common elements will be made substantially more difficult due to the installation of satellite antenna. Reroofing and repairing the exterior of buildings upon which satellite antennas is attached will be more difficult. See, Letter of Steve Camblin, Premier Roofing; Affidavit of James N. Reinhardt, 1, 2. Maintenance of lawn areas covered by satellite antennas will be more difficult and expensive. The association will have to increase its assessments in order to cover these expenses, which will lead to conflicts with

those owners not installing satellite antennas.

Installation of satellite antennas on common areas would also lead to conflicts between owners or residents. If there is insufficient space to set up equipment for all owners, then some owners will not be able to install equipment. In other cases, one owner's optimal space for installation may block access of another owner to satellite services. Similarly, one owner's optimal space may be on another owner's limited common element (for example, a patio or balcony), to which the first owner's legally guaranteed access would be barred. For other owners who have patios facing in the desirable direction, trees and other improvements installed by the association may interfere with access to signals. An individual owner clearly cannot be permitted to destroy association landscaping or improvements which interfere with satellite access to create a clear signal path. Coaxial cables connecting the satellite dish to the owner's television equipment may have to pass through other owners' units, particularly units on the upper floors of a building, subjecting them to satellite contractors entering their homes to drill the necessary holes. In addition, the multiplicity of service providers installing equipment will cause confusion, especially if several providers' equipment is located in the same common area. This could lead to difficulty in establishing liability for damage to the common property caused by the installation of such equipment. In addition, some units in a building may not be able to receive optimal services, due to their location in the building.

The problems associated with allowing individual owners or residents to install satellite antennas on common property are manifold. The installation of this equipment will increase the possibility of damage to the structural integrity of the building. Installation and maintenance will increase association costs. Damage caused by such equipment will lead to

increased litigation against associations, even if the association ultimately may seek contribution from the individual owner. Liability issues will also arise when it is unclear as to which telecommunications provider caused which damage.

In many community associations, the common property is used to provide recreational and other facilities to all owners and residents. These facilities include decks, pools, clubhouses, playgrounds, golf courses and picnic areas. The use and enjoyment of these common areas could be destroyed if an individual owner could not be restricted from installing a satellite antenna in the middle of the playground, deck or golf course because that particular owner perceives it as the best location for service.

It is the position of CAI, ARDA, and NAHC that satellite antennas should not be installed on common property by individual owners or residents; and that neither the Telecommunications Act nor the Proposed Rule as written precludes a community association from enforcing restrictions on an individual owner's or resident's installation of a satellite antenna on common property. However, if the FCC interprets the Proposed Rule to permit individual owners to install satellite antennas on common property, unfettered by association restrictions, then the community association must retain control of the common property to coordinate installation and maintenance if it is to solve the problems, previously noted, that will surely occur.

**B. Impact of Section 25.104(f) on Community Associations Comprised Mainly of Individual Property**

In community associations in which most property is individually owned, implementation of the FCC Proposed Rule will be less cumbersome and less problematic. However, another problem for these community associations is the interpretation of architectural restrictions which are in place to maintain property values.

If there is a reasonable way in which a satellite antenna can be installed in compliance with existing architectural controls, owners can be required to comply. The association should preserve the right to enforce reasonable installation rules so long as enforcement does not impair access to service. For example, if an owner can receive service by placing the satellite antenna in either the front or the back yard, then a rule that restricts such antennas to the back yard of a lot should be enforceable. If an owner chooses to install a satellite antenna in violation of a community association covenant, the burden should be on that owner to demonstrate that the equipment cannot be installed in compliance with the covenant. Continued enforceability of these restrictions will both provide equal access to satellite services and permit a community association to fulfill its legal obligations to protect, preserve and maintain the property values, historic structures, and character of the community.

## V. PROPOSED SOLUTIONS

In rulemaking, there are two possible approaches: the prescriptive method and the performance-based method. For the reasons listed below, the performance-based rule is a more effective method of achieving the goal of this Proposed Rule: to promote access to "video programming services over a satellite antenna less than one meter in diameter."

The prescriptive method of rulemaking mandates the exact result to be achieved by the rule, and the exact method of compliance with the rule. This type of rulemaking tends to be inflexible and unnecessarily restrictive, as those complying with the rule have only the methods enumerated in the rule in order to comply with the rule. The prescriptive method of rulemaking tends to stifle creative solutions to problems. Those complying with this type of rule cannot react to changing technology which may render the specific method of complying with the rule obsolete.

A performance-based rule clearly states the objective to be achieved by the rule. However, the rule does not specifically mandate the method to be used in reaching this objective. Creative and innovative techniques may then be used to achieve the purpose of the rule. Changes in technology also may be implemented much more quickly. Thus, this type of rule allows people to react more quickly to change.

Because the performance-based approach is more conducive to reacting to technological change, it is an effective method of achieving the purpose of this Proposed Rule. CAI, ARDA, and NAHC propose the following suggestions for such a performance-based rule, which would permit community associations wishing to enforce their rules to make access to video programming services available to their residents by whatever means possible. After having made available the services that each resident desires, the community association would then be able to enforce its restrictions.

For example, the community association could purchase and install one or more direct broadcast satellite antennas which would receive service from all satellite service providers requested by owners or residents. Each individual resident would then be able to select and



subscribe to the satellite service of his choice. CAI, ARDA, and NAHC have been informed that the technology is available to connect multiple receivers to one DBS antenna.<sup>3</sup> Since all residents would be connected to the satellite service of their choice, there would be no need for individual installations. The community association may then enforce its restrictions against individual property owners' installation of a satellite antenna.

To that end, CAI, ARDA, and NAHC propose the following language, to be added to the Proposed Rule:

*No restrictive covenant, encumbrance, homeowners' association rule, or other nongovernmental restriction shall be enforceable to the extent that it impairs a viewer's ability to receive video programming services over a satellite antenna less than one meter in diameter located on the individual viewer's individual property or exclusive use area; provided, however, that if a community association makes video programming services available, through any accessible means, to any association resident wishing to subscribe to such services, then such nongovernmental restrictions shall not be deemed to impair a viewer's ability to receive such service.*

This proposed language would clarify the position that CAI, ARDA, and NAHC has taken relating to the inability of individual owners or residents to install satellite antennas on common property. This language would also ensure that all owners have access to satellite antennas, even those whose units are located in areas inaccessible to satellite reception. Disputes between individual owners concerning placement of equipment would be eliminated. The community association's property interests would be protected, while assuring access to video programming services for all owners and residents.

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<sup>3</sup> Conversation with the Satellite Broadcasting and Communications Association, April 10, 1996.